

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ANDREDA GOLDEN,

Plaintiff,

vs.

HUBBELL INCORPORATED, a  
Connecticut corporation,  
also known as HUBBELL  
LIGHTING, INC., a  
Connecticut corporation, and  
HUBBELL INCORPORATED  
RETIREMENT PLAN FOR  
COLLECTIVELY BARGAINED  
HOURLY EMPLOYEES, an  
employee benefit plan,

Defendants.

NO. CV-07-0370-LRS

**ORDER GRANTING DEFENDANTS' MOTION  
TO DISMISS**

Before the court is Defendants Hubbell Incorporated ("Hubbell") and Hubbell Incorporated Retirement Plan for Collectively Bargained Hourly Employees (the "Plan") Motion to Dismiss (Ct. Rec. 9), filed January 31, 2008, and noted without oral argument. Defendants requests an order dismissing Plaintiff Andrea Golden's suit pursuant to Fed.R.Civ.P. 12(b)(6) because Hubbell is not a proper defendant in this action and Plaintiff failed to exhaust the mandatory administrative remedies available to her under the terms of the Plan.

**I. BRIEF FACTUAL BACKGROUND**

Plaintiff, appearing *pro se*, seeks retirement benefits of her now deceased ex-husband Plan participant<sup>1</sup> Franklin Jones ("Jones") whom

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<sup>1</sup>Jones was a participant in the Plan through his employment at Columbia Lighting, Inc. Hubbell, Inc. is the parent company of Hubbell Lighting, into which Columbia Lighting merged.

1 Plaintiff divorced in 2002. On or around May 15, 2007, Plaintiff's  
2 attorney at the time and the Plan's manager Lisa Gibson communicated  
3 about Plaintiff's rights under the plan. Ms. Gibson informed  
4 Plaintiff's attorney that benefits are only paid to surviving spouses  
5 and that no survivor or death benefits were available to Plaintiff  
6 because Jones was single at the time of his death. Hametz Decl., Ex.  
7 4.

8 On June 15, 2007, three months after Jones' death,<sup>2</sup> Plaintiff  
9 obtained a court order amending her prior divorce decree *nunc pro*  
10 *tunc*. The Amended Divorce Decree purports to vacate parts of the  
11 original Divorce Decree to the extent necessary to permit declaration  
12 and distribution of community property, including the pre-retirement  
13 death benefit. The Amended Divorce Decree also stated that Plaintiff  
14 was Jones' "surviving spouse" for the purpose of distribution of  
15 community property.

16 Plaintiff then sent copies of the Amended Divorce Decree to Ms.  
17 Gibson. On August 7, 2007, Ms. Gibson wrote a letter to Plaintiff  
18 stating that she was in receipt of the letter and that Hubbell's legal  
19 counsel was reviewing the same. On August 15, 2007, Plaintiff,  
20 through her attorney, mailed Ms. Gibson another copy of the Amended  
21 Divorce Decree and attached copies of Jones' death certificate and two  
22 marriage certificates. On September 24, 2007 Plaintiff telephoned Ms/  
23 Gibson and left a message asking whether she needed an application to  
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25 <sup>2</sup>Jones dies on March 15, 2007 and Plaintiff was appointed  
26 Administrator of Jones' estate on April 18, 2007. That same day,  
27 Plaintiff delivered a certified cop of Jones' death certificate and  
her Letters of Administration to the human resource office at Columbia  
Lighting, Inc.

1 process her claim for retirement benefits. Ms. Gibson returned  
2 Plaintiff's call the next day, and left a voice mail informing  
3 Plaintiff that there was no need to send an application presently and  
4 that their attorneys were still reviewing the information she had sent  
5 in. Complaint ¶ 24.

6 Outside counsel for the Plan sent a letter to Plaintiff's  
7 attorney on November 21, 2007 informing that the Amended Divorce  
8 Decree was not a qualified domestic relations order ("QDRO") under  
9 ERISA because no pre-retirement survivor annuity was payable on Jones'  
10 death, and the posthumous designation of Plaintiff as the surviving  
11 spouse of Jones would require the Plan to pay a benefit that it would  
12 otherwise not be required to pay on Jones' death, thereby increasing  
13 benefits payable under the Plan in violation of ERISA's requirements  
14 for a QDRO. Struve Decl. ¶¶ 1-2, Ex. 1. The letter additionally  
15 explained that no benefits were payable under the Plan because the  
16 Amended Divorce Decree did not satisfy the technical requirements of a  
17 QDRO, in that it did not specify, among other things, the last known  
18 mailing address of Jones and Plaintiff. The letter further and notably  
19 stated:

20 If Ms. Golden disputes this determination, she may  
21 file a claim for benefits under the terms of the  
22 Plan and ERISA in writing with Lisa Gibson,  
23 Retirement Plans Manager, Hubbell Incorporated 584  
Derby Milford Road, P.O. Box 549 Orange, CT 06477-  
4024.

24 Struve Decl, Ex. 1.

## 25 II. DISCUSSION

### 26 A. Motion to Dismiss Standards Under Rule 12(b)(6)

27 In ruling on a motion to dismiss pursuant to FRCP 12(b)(6), the

1 Court takes all factual allegations set forth in the complaint as true  
2 and views them in the light most favorable to the plaintiff. See,  
3 e.g., *Galbraith v. County of Santa Clara*, 307 F.3d 1119, 1121 (9th  
4 Cir.2002); see also *Blowers v. Eli Lilly & Co.*, 100 F.Supp.2d 1265  
5 (D.Hawaii 2000). A complaint or claim may not be dismissed for failure  
6 to state a claim unless it appears beyond doubt that the plaintiff  
7 cannot prove any set of facts in support of the complaint or claim  
8 that would entitle him or her to relief. See *Thompson v. Davis*, 295  
9 F.3d 890, 895 (9th Cir.2002).

10 **B. Hubbell Incorporated is an Improper Defendant**

11 Defendants assert that Plaintiff's claims against Hubbell should  
12 be dismissed because Hubbell is not a proper defendant to this action.  
13 Defendants state that Hubbell is not an entity that can be sued for  
14 the benefits Plaintiff seeks under 29 U.S.C. §1132. ERISA provides  
15 that a cause of action to recover benefits under this statute may be  
16 brought only against an employee benefit plan. See 29 U.S.C.  
17 §1132(d)(1). While the Ninth Circuit has permitted lawsuits against  
18 Plan Administrators, Hubbell is neither a plan Administrator nor the  
19 employee benefit plan itself. Defendants urge the Court to dismiss  
20 Plaintiff's claims against Hubbell.

21 Plaintiff, in opposition, argues that under the Hubbell  
22 retirement plan, the company or its delegate is the plan administrator  
23 insofar as determining whether a claimant is eligible for benefits.  
24 Ct. Rec. 21 at 2. Hubbell Inc., Plaintiff reasons, is a proper  
25 defendant to this action pursuant to *Everhart v. Allmerica Fin. Life.*  
26 *Ins. Co.*, 275 F.3d 751, 754 (9<sup>th</sup> Cir.2001) and the Hubbell retirement  
27

1 plan.

2 The Court finds that the Ninth Circuit case law permits claimants  
3 to bring ERISA actions to recover benefits against the Plan or plan  
4 administrators. The question becomes whether Hubbell can be considered  
5 a plan administrator. The Sixth Circuit has held that an employer is  
6 not a proper defendant in an action for benefits under ERISA unless it  
7 is "shown to control administration of a plan". *Daniel v. Eaton*  
8 *Corp.*, 839 F.2d 263, 266 (6th Cir.1988). The Court does not find that  
9 the plan participant's employer, Hubbell, is the party that controls  
10 the plan based on Sections 9.01 and 9.02 of the Plan. These sections  
11 clearly give the Retirement Committee full power to carry out  
12 (control) the provisions of the Plan. Section 9.01 of the Plan  
13 states:

14 The Retirement Committee shall be the Plan  
15 Administrator and shall have all such powers as  
16 may be necessary to carry out the provisions of  
the Plan."  
Ct. Rec. 19, Ex. 3.

17  
18 The Court finds Hubbell is not a proper defendant and Plaintiff's  
19 claims against Hubbell are dismissed.

20 **C. Plaintiff Failed to Exhaust Administrative Remedies**

21 Defendants argue that Plaintiff's claims should be dismissed for  
22 failure to exhaust administrative remedies and avail herself of  
23 administrative procedures and protocols set forth in the Plan.  
24 Defendants argue, citing *Diaz v. United Agric.Employee Welfare Benefit*  
25 *Plan & Trust*, 50 F.3d 1478, 1483 (9<sup>th</sup> Cir.1995) that the law governing  
26 ERISA claims firmly requires her to exhaust her administrative  
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1 remedies.

2 Plaintiff argues that, in effect, there was no administrative  
3 remedy available to her. Plaintiff argues that she did make  
4 "application" for benefits although she argues that she was never told  
5 if an application "form" was required. Plaintiff appears to confuse  
6 the Plan's administrative procedure and protocol with the process by  
7 which the Plan determines whether a domestic relations order is a  
8 QDRO.

9 The Court finds that Plaintiff has not exhausted her  
10 administrative remedies. Plaintiff never made application although it  
11 is true she attempted to do so. However, after Plaintiff submitted  
12 the Amended Divorce Decree to the Plan for consideration, the Plan  
13 consulted with its legal counsel to determine whether it was a QDRO.  
14 On November 21, 2007, after a reasonable period of time pursuant to  
15 federal law (29 U.S.C. §1056(d)(3)(G)(ii)), the Plan responded to  
16 Plaintiff's submissions, rejecting the Amended Divorce Decree for not  
17 being a valid QDRO. Further, the November 21, 2007 to Plaintiff  
18 expressly informed her that if she disputed the determination, she  
19 could file a claim for benefits under the terms of the Plan and ERISA  
20 in writing with Lisa Gibson . . . " Struve Decl., Ex. 1.

21 Plaintiff has failed to exhaust all administrative remedies set  
22 forth in the Plan, including her right to appeal, before bringing a  
23 lawsuit. Under the Plan, Plaintiff may not commence legal action  
24 until she has exhausted the administrative process set forth in the  
25 Plan. Ct. Rec. 19, Ex. 3. Plaintiff's suit is premature. The Plan  
26 contains a clear administrative protocol for adjudicating an  
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1 application for benefits and any appeals therefrom. Plaintiff has not  
2 used these administrative procedures. The law governing ERISA claims  
3 firmly requires the exhaustion of administrative remedies.

### 4 III. CONCLUSION

5 Plaintiff's claims against Hubbell are dismissed with prejudice  
6 because Hubbell is not a plan administrator nor the Plan itself.  
7 Plaintiff may bring suit against the Plan only after she has exhausted  
8 the Plan's administrative remedies, including an appeal.

#### 9 IT IS ORDERED:

10 1. Defendants Hubbell Incorporated and Hubbell Incorporated  
11 Retirement Plan for Collectively Bargained Hourly Employees' Motion to  
12 Dismiss, **Ct. Rec. 9**, filed January 31, 2008, is **GRANTED**. Plaintiff's  
13 claims against Hubbell Incorporated are **dismissed with prejudice**.  
14 Plaintiff's claims against the Hubbell Incorporated Retirement Plan  
15 for Collectively Bargained Hourly Employees are **dismissed without**  
16 **prejudice**.

17 2. The District Court Executive is directed to:

18 (a) FILE THIS ORDER;

19 (b) PROVIDE A COPY TO COUNSEL OF RECORD AND PRO SE  
20 PLAINTIFF;

21 (c) ENTER JUDGMENT CONSISTENT WITH THIS ORDER; and

22 (c) **CLOSE THIS FILE**.

23  
24 DATED this 11<sup>th</sup> day of April, 2008.

25 ***s/Lonny R. Suko***

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LONNY R. SUKO  
UNITED STATES DISTRICT JUDGE